

THE GLOBAL BUSINESS LAW REVIEW



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IN THE BALANCE

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I. INTRODUCTION

“Toa kitu kidogo” or “give a little something” is often heard in East Africa, where bribes are commonplace. From a traffic stop to picking up a package at the customs window in the post office, individuals can expect to add on a few shillings or francs for the “cost of doing business.” But corruption has far darker consequences; it erodes the social fabric of a society, stifling its opportunities for growth, dissolving faith in the government, and preventing substantive rule of law and good governance. Corruption, defined broadly, conveys a lack of accountability for government decisions, consequences for illegal actions, or a fair justice system. Through various anti-corruption measures, countries struggle in their own fight against the negative consequences of corruption. This paper will examine the definition and measurements of corruption, the problem of corruption in the context of three East African nations (Kenya, the United Republic of Tanzania, and Rwanda), the anti-corruption techniques utilized in each country, and if those techniques have been effective.

Each of the three countries has adopted various pieces of anti-corruption legislation and, to various degrees of effectiveness, implemented the laws. But corruption remains a significant barrier to development and comes with significant economic and social costs. While the focus of this paper will be the adequacy of the legal and administrative measures against corruption, it must be recognized that corruption cannot be fought on a purely legal level. A country’s history, political establishment, civil society, and economic inequalities are all factors in the breadth and depth of corruption and the effects on society. There is no exact formula to eliminate corruption, but rather it is specific to each country and requires a holistic approach.

II. CORRUPTION

A. *What is Corruption?*

Corruption can be defined as the impairment of integrity or the inducement to wrong by improper or illegal means.¹ It is public officials misusing or abusing their power for personal gain. Corruption manifests itself in many forms: bribing a policeman to avoid arrest, a politician persuading voters with the promise of future benefits, or a Member of Parliament (MP) skimming off public funds for his own gain are just a few examples. “Grand corruption” involves corruption of the decision-makers—the senior-level officials in a government, MPs, and heads of state. “Petty corruption” involves local level officials, including police officers, immigration officers, and district officials.² Corruption is evidence of a lack of accountability within the public sector of a country and, therefore, the presence of corruption is significantly tied to the absence of the rule of law in a given country.

¹ MERRIAM-WEBSTER DICTIONARY, *available at* <http://www.merriam-webster.com/dictionary/corruption> (last visited Jan. 31, 2012).

² George Moody-Stuart, *The Costs of Grand Corruption*, 4 *ECON. REFORM TODAY* 19, 19 (1996).

Scholars argue that corruptive practices, specifically those rampant in East Africa, are not a native endemic but rather a symptom of post-colonialism.³ Under colonization, arbitrary borders were used to divide up the colonies to ease the colonial powers' burden of ruling over the local population, thus forming countries of ethnic groups that had co-existed autonomously. During the decolonization process, European powers marginalized Africans and worked closely with those anointed by the colonial powers to be the new ruling elite. Unfortunately, those groups were often chosen based on how much the Europeans would benefit, not in the interests of the African people.⁴ By the 1970s, African governments, including those in the East African states of Kenya, the United Republic of Tanzania ("Tanzania"), and Rwanda, were in their infant stages. Most African leaders had failed to develop adequate structures to provide basic social services to their people, such as education, health care, or access to electricity.⁵ Instead, military dictatorships and strong police forces developed in many countries. Resources were exploited to benefit the ruling elite and thus corrupt patrimonial political and economic systems were formed.

As well as choosing a new form of government, the new African governments were tasked with developing a national economy. Many of the new legislators believed that rapid economic growth and development could only be achieved through a one-party system, as the multi-party democracies in the West encouraged polarization of already existing fragile or non-existent alliances between tribes or ethnicities.⁶ Additionally, the type of economy chosen by many of the new countries involved very high levels of government control over the allocation of resources and almost all economic activities.⁷

One of the results of the government's control over the economy was that the public sector grew rapidly while private sector growth was marginalized. Much of the new nations' resources were allocated at the will of the ruling elite. Private investors and entrepreneurs had little incentive to develop business, and the framework of the new government intentionally or inadvertently stifled any real economic growth and development.⁸ Corruption was able to flourish under the post-colonial systems, with a lack of adequately developed laws and institutions, patronage, abuse of political power, misuse of public funds, and bribery becoming the status quo.⁹

³ John Mukum Mbaku, *Corruption as an Important Post-Independence Institution in Africa*, in *CORRUPTION AND THE CRISIS OF INSTITUTIONAL REFORMS IN AFRICA* 16, 16-17 (John Mukum Mbaku ed., 1998).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 19.

⁷ *Id.* at 20.

⁸ *Id.* at 23-24.

⁹ *Id.* at 27.

B. Three Bases of Corruption

The problem of corruption can be viewed through three lenses: economic, cultural, and political.¹⁰ These lenses could also be considered ways to view the causes of corruption as they are always working together in some fashion. Being able to untangle the three dimensions of corruption in the context of any one specific country is a critical first step in forming a comprehensive plan to preventing corruption.¹¹ Economic inequalities, the culture of bribery, and the strength or absence of democratic structure are examples of how deeply rooted underlying factors play a role in the level of corruption.

A scarcity of resources and ineffective government control make corruption an easy way to supplement one's income.¹² Developing countries that have limited resources also often have large economic gaps between the few super-wealthy and the majority who live day-to-day. Many times public servants, such as police officers and immigration officers, find themselves in a position where they are not making enough to provide for their families with their government salaries. Therefore, paying bribes to civil servants to avoid a traffic ticket, or to move a visa application to the top of the pile, are common occurrences.¹³ But economic corruption is not limited to the developing world. For example, over the last few years, Siemens, a German manufacturing giant, has been under investigation for numerous counts of corruption and bribery, from paying bribes to employees of an Italian client to under the table dealings with officials from the Argentine government.¹⁴ In fact the investigations have led to charges in the United States against eight Siemens executives for paying over \$100 million in bribes to the Argentine government officials to win a \$1 billion dollar contract.¹⁵ Corruption for economic gain is present in every society.

Culture can add a layer of complexity to the issue because what is considered inappropriate bribery in one culture may be a very traditional and acceptable exchange of gifts, signifying that a deal has been made, in another.¹⁶ Other social factors, "including the cultural basis of socioeconomic and political organizations,

¹⁰ SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORMS* 4-5 (1999).

¹¹ *Id.*

¹² See Bertha Z. Osei-Hwedie & Kwaku Osei-Hwedie, *The Political, Economic, and Cultural Bases of Corruption in Africa*, in *CORRUPTION AND DEVELOPMENT IN AFRICA: LESSONS FROM COUNTRY CASE-STUDIES* 40, 45 (Kempe Ronald Hope, Sr., & Bornwell C. Chikulo eds., Palgrave, 2000).

¹³ Interview with Lusajo Mwamakula, Former Police Officer, Moshi Municipality, Moshi, Tanzania (July 26, 2011).

¹⁴ Neil De Jour, *The Bribery Scandal at Siemens AG*, FOCUS (Sept. 7, 2010), <http://www.focus.com/briefs/bribery-scandal-siemens-ag/>; Edward Wyatt, *Former Siemens Executives are Charged with Bribery*, N.Y. TIMES (Dec. 13, 2011), <http://www.nytimes.com/2011/12/14/business/global/former-siemens-executives-charged-withbribery.html?scp=1&sq=former%20siemens%20executives%20charged%20with%20bribery&st=cse>.

¹⁵ *U.S. Charges Siemens Executives with Bribery*, TRUSTLAW.ORG (Dec. 13, 2011, 11:53 PM), <http://www.trust.org/trustlaw/news/us-charges-siemens-executives-with-bribery>.

¹⁶ DANIEL ALTMAN, *CONNECTED: 24 HOURS IN THE GLOBAL ECONOMY* 114-15 (2007).

pressures from the extended family and friends, and the lack of distinction between personal and private property” all add to the problem of corruption.¹⁷

Political corruption has plagued countries all over the world, but is particularly prevalent in East Africa where the democracies are relatively young and often dominated by one political party. Imposing undue influence on voters, rewarding supporters through patronage, and exploiting power for personal gain at the expense of the electorate are common acts of corruption.¹⁸ Regardless of the type of corruption, empirical evidence has proven the negative effects of corruption on a society.¹⁹ The value of having effective anti-corruption mechanisms in place is undisputed.²⁰

C. Measures of Corruption

Corruption lends itself to measurement more readily than the rule of law, but it is not without its own set of challenges. First, corruption can be manifested in an infinite number of acts: misuse of public funds, taking bribes, and election tampering are just a few examples. Second, the specific acts are hard to measure because they too often go unreported. Third, if the data is being collected through government organizations, it is hard to imagine there is no bias or pressure to underreport (if at all). Fortunately, there are a number of existing indexes that attempt to measure levels of corruption all over the world.

Transparency International (“TI”) produces the best-known measure of corruption, the Corruption Perceptions Index (“CPI”). The CPI ranks countries based on the perceptions of how corrupt their public sector is thought to be. The index is compiled from corruption-related data collected from the countries, experts living and working in each country, and other polls.²¹ The CPI is based on perceptions because it assumes that since corruption is illegal and often unreported, accurate data of the levels of corruption would be unreliable and nearly impossible to gather.²² The CPI assigns countries a score from 0 to 10, with 0 being very corrupt and 10 being very clean and free of corruption.²³

The World Bank produces the World Bank Worldwide Governance Indicators (“WBI”) each year in an attempt to quantify the six concepts of governance by measuring the perceptions of experts and citizens.²⁴ The score for each country on

¹⁷ Osei-Hwedie & Osei-Hwedie, *supra* note 12, at 41.

¹⁸ ALTMAN, *supra* note 16, at 119.

¹⁹ ROSE-ACKERMAN, *supra* note 10, at 4-5.

²⁰ *Id.*

²¹ *Corruption Perceptions Index 2011*, TRANSPARENCY INTERNATIONAL, http://cpi.transparency.org/cpi2011/in_detail/#myAnchor1 (last visited Jan. 31, 2012). The CPI only includes countries if there are three or more sources of data for the country.

²² *Id.*

²³ *Id.*

²⁴ Daniel Kaufman, Aart Kraay & Massimo Mastruzzi, *The Worldwide Governance Indicators: Methodology and Analytical Issues* 4-7 (The World Bank, Policy Research Working Paper No. 5430, 2010), available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2010/09/24/000158349_20100924120727/Rendered/PDF/WPS5430.pdf?cid=EAP_GACGovHubNewsletterEN_M_EXT.

“control of corruption” is a composite score based on the “perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests.”²⁵ The rank assigned to each country is between 0 (lowest level of “control of corruption”) and 100 (highest level of “control of corruption”).²⁶

Regionally, a collaborative effort among national chapters of TI, the Association Burundaise Des Consommateurs (AUBCO) from Burundi, and the Concern for Development Initiatives in Africa (ForDia) from Tanzania produce the East African Bribery Index (“EABI”).²⁷ The EABI measures the prevalence of bribery within each of the five East African countries, as well as breaking it down by public and private institution within each country. The data is collected by a random sampling of households throughout all administrative regions of each country, asking individuals to name the public or private institution where they were required to pay the bribe or where the bribe was a condition to service, and whether or not service was given upon payment of the bribe or refusal to pay the bribe.²⁸ The measure of prevalence of bribery in the country is the likelihood that an individual will have to pay a bribe to access services at the national level.²⁹

D. Consequences of Corruption

It seems remiss to discuss the causes of corruption and mechanisms to control corruption without briefly covering a few of the most important consequences of corruption. Corruption has a negative effect on the societies in which it exists in a number of ways.

Corruption is linked to weak economies, though whether corruption is the cause is extremely difficult to prove. It is a factor for businesses from wealthy countries consider when deciding whether to invest or expand into a new country. Companies are often asked to pay bribes to numerous government officials during the initial stages of investment, thereby supporting corruption, or to decide against the opportunity, hurting the economy by not investing at all. The economic consequences include: bureaucratic corruption hurting small businesses in the domestic economy, discouraging foreign investment, and negatively affecting the economic growth rate of a country.³⁰ International aid is not immune to the problems of corruption, as it too can end up in the wrong hands when politicians use

²⁵ *Id.*

²⁶ *The Worldwide Governance Indicators: Control of Corruption*, THE WORLD BANK, available at <http://info.worldbank.org/governance/wgi/pdf/rl.pdf> (last visited Jan. 31, 2012).

²⁷ Member Profile: ABUCO—Consumers Association of Burundi, CONSUMERS INTERNATIONAL, <http://www.consumersinternational.org/our-members/member-directory/ABUCO%20-%20Consumers%20Association%20of%20Burundi%20-%20Association%20Burundaise%20des%20Consommateurs> (last visited Jan. 31, 2012).

²⁸ See generally *The East African Bribery Index*, TRANSPARENCY INTERNATIONAL (2011), available at http://www.transparency.org/news_room/latest_news/press_releases_nc/2011/2011_10_20_east_african_bribery_index_2011.

²⁹ *Id.* at 1.

³⁰ Shang-Jin Wei, *Corruption in Economic Development: Beneficial Grease, Minor Annoyance, or Major Obstacle?* 8-11 (The World Bank, Working Paper No. 2048, 1999), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=604923.

money for personal gain instead of pumping it into their economy, creating jobs and raising incomes for nationals.³¹ “The fruits of corruption provide another motivation for repression and resistance to change.”³²

The costs are not just economic. When allocating resources for public investment, corrupt government officials choose projects that can be manipulated or have a higher likelihood of kickbacks, regardless of whether or not they have a high social value.³³ Social services suffer from lack of funds while the politicians and public officials line their pockets with payouts. In September 2011, in the midst of a drought affecting millions of Kenyans, a string of corruption scandals were uncovered that accounted for tens of millions of dollars.³⁴ The politicians who are using patronage and corruption for personal gain and to maintain power have no motivation to fix broken public services or improve the status quo for the millions of average citizens. Corruption poses a variety of problems to countries, but so far the attempts to prevent corruption and establish rule of law have had limited success.

III. KENYA

A. Post-Colonial History

Kenya was part of British East Africa during colonization. The ethnic make-up of the country was (and still is) dominated by a handful of groups: the Kikuyu, the Kalenjin, the Luo and the Luhya.³⁵ During colonization, the British systematically took the most fertile farmland and gave it to their white settlers for cultivation, mainly for coffee. Incidentally, since most of the best land was in the Rift Valley and central highlands, which were home to the Kikuyu and Kalenjin people; these two groups suffered more than most. Jomo Kenyatta was a leader of the Kikuyu and instrumental in the “Mau Mau” Rebellion, a Kikuyu uprising against the colonizers that marked the beginning of the fight for independence,³⁶ which was achieved on December 12, 1963.³⁷

Kenyatta became the first President of Kenya, representing the Kenya African National Union party (KANU), which was comprised of the Kikuyu people and few other ethnic groups. During the 1960s, there were two opposition parties, one led by the Luo and the other by a coalition of smaller ethnic groups, but both were

³¹ ALTMAN, *supra* note 16, at 121.

³² *Id.* at 119.

³³ Wei, *supra* note 30, at 11-13.

³⁴ *String of Corruption Scandals Leaves Kenya Government Without Enough Money to Feed Starving*, THE WASHINGTON POST (Sept. 8, 2011), available at http://www.washingtonpost.com/world/africa/string-of-corruption-scandals-leaves-kenya-government-without-enough-money-to-feed-starving/2011/09/08/gIQAAdZACK_story.html [hereinafter *String of Corruption*].

³⁵ *Kenya Fact Sheet*, U.S. DEPT. OF STATE, <http://www.state.gov/r/pa/ei/bgn/2962.htm> (last visited Nov. 30, 2011).

³⁶ GUY ARNOLD, A GUIDE TO AFRICAN POLITICAL AND ECONOMIC DEVELOPMENT 82 (2001).

³⁷ *Kenya Fact Sheet*, *supra* note 35.

dissolved by 1966.³⁸ By that time, Kenya was unofficially a one-party state, made official by an amendment to the constitution in 1982.³⁹

After Kenyatta's death in 1978, the Presidency changed ethnic groups, but not political parties. President Daniel Arap Moi, who was a Kalenjin, took over the seat. Presumably, international and public pressures mounted to open the political system to opposition, and in 1991 the one-party state was repealed and a multi-party system was put in place. The first multi-party elections were held in 1992 with little effect on KANU's political stronghold. It was not until the 1997 elections that KANU needed to build coalitions with minority ethnic groups to retain the majority.⁴⁰ From 1978 until 2002, Moi's administration became synonymous with corruption and patronage politics.⁴¹

The 2002 presidential election was critical in Kenyan's politics. Shortly before the December vote, a new opposition coalition party formed called the National Rainbow Coalition (NARC). Despite being a relatively loosely organized coalition (as seen by its dissolution shortly after conception), it was a powerful statement that the Kenyan people wanted a change from the corrupt rule of KANU.⁴² The NARC candidate, Mwai Kibaki, a Kikuyu from the Rift Valley, defeated Moi at the voting booth in what international observers considered to be a free and fair election.⁴³

By 2005, during the process of drafting a new constitution, the fractions among various alliances in NARC began splitting the party. The division led to two political parties vying for the Presidency in 2007—the Orange Democratic Movement (ODM) and the Party of National Unity (PNU). Ralia Odinga, a Luo who was once Kibaki's ally, led ODM and the PNU remained the party of President Kibaki and his supporters. The majority of PNU supporters are Kikuyu, while ODM supporters are comprised of supporters representing nearly all the other ethnic groups.⁴⁴

The December 27, 2007 elections for the Presidency were tainted with allegations of voter fraud, irregularities in vote counting, and, once Kibaki was announced as the winner, outbreaks of violence. Frustrations against what voters saw as a corrupt political machine manifested in violence that left 1,300 Kenyans dead and over 500,000 displaced by the violence in Nairobi, the capital city. After the riots were stopped, a power-sharing deal was brokered with the help of former United Nations Secretary General Kofi Annan. The deal was signed in 2008, giving the Presidency to Kibaki and a newly-created Prime Minister position to Odinga.⁴⁵

Throughout the tumultuous elections and power-sharing negotiations, the task of drafting a new constitution continued. It focused on reforms to the constitutional

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Gladwell Otieno, *The NARC's Anti-Corruption Drive in Kenya*, 14 AFR. SECURITY REV. 4, 1 (2005).

⁴² *Kenya Fact Sheet*, *supra* note 35.

⁴³ Otieno, *supra* note 41, at 1.

⁴⁴ *Kenya Fact Sheet*, *supra* note 35.

⁴⁵ *Id.*

structure, electoral system, land allocation and rights, and institutional capacity building, as well as addressing government accountability for corruption and political violence. The new constitution was approved by popular vote on August 4, 2010.⁴⁶

The Kenyan economy has mirrored the troubled political scene. After periods of high growth immediately after independence, economic growth slowed down significantly in the 1980s and 1990s. Since 1995 it has seen positive, albeit small, growth. It was picking up speed leading up to the 2007 elections, but political violence severely disrupted the progress.⁴⁷

B. Corruption in Kenya

The 1990s in Kenya saw one of the biggest grand corruption schemes come to light. The Goldenberg Scandal, an export compensation scheme, was exposed; an estimated \$650 million USD was embezzled.⁴⁸ An unrelated study on corruption and laxity cost Kenya over \$6.4 billion between 1991 and 1997.⁴⁹ The political scene was certainly ripe for the argument that corruption was out of control and needed to be addressed, setting the stage for Kibaki to win the Presidency in 2002.

Kibaki and NARC promised to crack down on corruption. A Commission of Inquiry was formed to investigate the Goldenberg Scandal and legislation was passed to form various institutions to safeguard against corruption, including the Public Office Ethics Act, the Commission of Inquiry into Irregular and Illegal Allocation of Public Lands, and the Pending Bills Verification and Validation Committee. But the NARC government and Kibaki fell short on many of these lofty goals. The Commission of Inquiry on the Goldenberg Scandal produced a thorough investigation but lacked follow-through to bring those most responsible to justice.⁵⁰ In many ways, the old ways of corruption and patronage politics under Moi and KANU had not changed.⁵¹

In 2006 there were two major corruption scandals that broke, one regarding money laundering and the other a tax evasion scandal in the banking system. The incidents were linked to government officials, including three senior-level government ministers, one of which was re-appointed after the allegations.⁵² Around the same time, John Githongo, the well-respected former director for Transparency International Kenya who had been appointed by Kibaki to lead the fight against corruption, resigned and relocated to England, stating that he was disappointed and disillusioned by the lack of commitment in the Kibaki government to fight corruption.⁵³ The problem of corruption only worsened in 2007 with post-election

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Otieno, *supra* note 41, at 2.

⁴⁹ Policy Brief, *A Survey of Seven Years of Waste*, CENTRE FOR GOV'T AND DEV. (Feb. 2001); Otieno *supra* note 41, at 4.

⁵⁰ Otieno, *supra* note 41, at 2-5.

⁵¹ *Id.* at 5.

⁵² *Id.*

⁵³ Alex Perry & Laura Blue, *The Demons That Still Haunt Africa* 35, TIME (Jan. 10, 2008), <http://www.time.com/time/magazine/article/0,9171,1702349,00.html>.

violence and allegations of serious errors in vote counting, some districts reporting more votes than they had voters.⁵⁴

C. Anti-Corruption Efforts

Anti-corruption legislation began in 1956, when Kenya was still a British colony, with the Prevention of Corruption Act, which remained in effect until May 2003.⁵⁵ The Kenyan Anti-Corruption Authority (KACA) enforced the Act until it was disbanded in 2000 after a ruling from the High Court declared the KACA undermined the authority of the Attorney General's office.⁵⁶ The Anti-Corruption Police Unit took on the role of investigation and prosecuting corruption from August 2001 until it was also replaced by the Kenya Anti-Corruption Commission (KACC) in May 2003.⁵⁷

In line with the 2002 election of Kibaki and his promise to focus on the fight against corruption, 2003 was a big year for anti-corruption legislation. Many of the good governance efforts were tied to the Economic Recovery Strategy in 2003, including two key pieces of legislation: the Anti-Corruption and Economic Crimes Act (ACECA) and the Public Officer Ethics Act (POEA).⁵⁸ The ACECA created the Kenya Anti-Corruption Commission, which was responsible for investigating corruption and economic crimes and conducting public education on corruption.⁵⁹ The POEA provides codes of conduct for all public officers and compels all government officials to declare their wealth, including the assets of their spouse and dependents.⁶⁰ This legislation was seen as a solid effort for reform and as a result some institutions that had severed ties because of corruption in the past, like the International Monetary Fund, began working with Kenya again.⁶¹ Other pieces of legislation passed by Kibaki and NARC during his presidential term included the Public Procurement and Disposal Act of 2005, the Public Procurement Regulations (2006), and the Witness Protection Act, 2006.⁶²

After the new constitution passed, the KACC was restructured to conform to stronger regulations against corruption and renamed the Ethics and Anti-Corruption Commission (EACC).⁶³ The EACC reports investigations and traces assets, conducts litigation and recovery of public and unexplained assets, implements corruption prevention activities, and assists in institutional capacity building.⁶⁴

⁵⁴ Otieno, *supra* note 41, at 5.

⁵⁵ ETHICS AND ANTI-CORRUPTION COMMISSION, <http://www.kacc.go.ke/default.asp?pageid=2> (last visited Dec. 5, 2011).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ ETHICS AND ANTI-CORRUPTION COMMISSION, *supra* note 55; Otieno, *supra* note 41, at 2.

⁵⁹ Otieno, *supra* note 41, at 1.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² ETHICS AND ANTI-CORRUPTION COMMISSION, *supra* note 55.

⁶³ *Id.*

⁶⁴ Annual Report 2009/2010, Kenya Anti-Corruption Commission, *available at* <http://www.kacc.go.ke/default.asp?pageid=20> (last visited Jan. 31, 2012).

There has also been specialty courts established within the Kenyan court system to deal with corruption cases.⁶⁵

D. Status of Corruption

According to the EABI 2011, an individual has a 28.8% chance of having to pay a bribe in order to access services at the national level (i.e., police, immigration and customs, tax revenue agency). This is a slight improvement from 2010 when there was a 31.9% chance of encountering a bribe.⁶⁶ The WBGI score for “control of corruption” has increased from 14.63 to 18.66, showing modest gains in the perception that corruption is under control in Kenya.⁶⁷ The CPI score for Kenya in 2011 is 2.2 (out of 10), a gain from 2.1 in 2000.⁶⁸ All scores indicate improvements, even if very modest.

Evidence that is equally if not more powerful than the statistics is current news stories of corruption within the Kenyan government. In 2011, there were reports of missing education funds and missing funds for food aid for northern Kenyans suffering from the East African drought.⁶⁹ Political corruption from post-election violence in 2007 is continuing to play out as six government officials were indicted by the International Criminal Court in 2011 for inciting the riots caused by alleged political corruption in the December 2007 presidential election.⁷⁰ While the statistics may show slight improvements for the fight against corruption in Kenya, it remains a significant plague on the country.

IV. UNITED REPUBLIC OF TANZANIA

A. Post-Colonial History

Tanganyika (the mainland of Tanzania) was a German colony until the end of World War I when it became part of British East Africa. Tanganyika became fully independent on December 9, 1961, and Julius Nyerere, the leader of the Tanganyika Africa National Union party (TANU), became the first President. Three years later on April 26, 1964, it joined with Zanzibar to become the United Republic of Tanzania.⁷¹ The political parties from Tanganyika and Zanzibar also merged in 1977 to become Chama Cha Mapinduzi (CCM), known as the Revolutionary party.⁷²

⁶⁵ *Special Courts for Corruption Cases*, U4.No, <http://www.u4.no/publications/special-courts-for-corruption-cases/> (last visited Jan. 31, 2012).

⁶⁶ *Burundi Most Corrupt in East Africa, Index Shows*, REUTERS AFRICA (July 22, 2010), <http://af.reuters.com/article/rwandaNews/idAFLDE66L0U320100722?pageNumber=1&virtualBrandChannel=0>. The EABI has only been produced since 2009. In the 2009 EABI, Rwanda is not included. Therefore, as a comparison, 2010 is used.

⁶⁷ *Control of Corruption*, *supra* note 26.

⁶⁸ *Corruptions Perception Index*, *supra* note 21.

⁶⁹ *String of Corruption*, *supra* note 34.

⁷⁰ *Kenya's Appeal on ICC Cases Dismissed*, THE DAILY NATION (Aug. 30, 2011), <http://allafrica.com/stories/201108300961.html>.

⁷¹ *Tanzania Fact Sheet*, U.S. DEPT. OF STATE, <http://www.state.gov/r/pa/ei/bgn/2843.htm#history> (last visited Nov. 28, 2011).

⁷² *Id.*

Nyerere, affectionately called “Mwalimu” (the Kiswahili word for teacher), was one of only a few Tanzanians who had been educated abroad during colonization. That education greatly influenced his political and economic ideology. From independence, Nyerere’s socialist form of government encouraged a strong national identity among the people, taking priority over ethnic or religious differences.⁷³

Nyerere’s policy of socialism meant that CCM and the state were effectively one and the same. While the cohesive vision of having just one “people” has served well (as seen by Tanzania’s political stability through the years), it did not do any favors to economic growth or prevention of corruption. Nyerere stepped down from the Presidency in 1985 and was followed by President Ali Hassan Mwinyi (also from the CMM party).⁷⁴ Mwinyi was succeeded by President Benjamin Mpaka in 1995 until 2005. In 2005, President Jakaya Kikwete won the presidency. While there have been four multi-party elections in Tanzania’s history, CCM has handily remained in control of virtually all aspects of the government.⁷⁵ In the most recent election in 2010, opposition parties began to pose legitimate threats to the CCM stronghold. The opposition party Chadema won a number of seats in the Parliament and the presidential candidate for Chadema, Willibrod Slaa, won 27% of the vote.⁷⁶

Nyerere’s original policies of socialism, sometimes referred to as the “Great Socialist Experiment,” were largely a failure when it came to a developing economic system.⁷⁷ By 1986 Tanzania began to liberalize their system and allow for open markets, but growth was slow. Even in recent years, about 30% of the country’s budget comes from donor aid. Tanzania has made efforts to reform the economy and encourage investment—particularly foreign direct investment—but the legacy of socialism, along with complaints of a hostile bureaucracy and a weak judiciary, does not help.⁷⁸

B. Corruption in Tanzania

During the 2005 presidential campaign, Kikwete ran on an anti-corruption platform, pledging to commit to the fight against corruption. Unfortunately, a quick overview of the last several years does not show evidence of any implementation of his promise.⁷⁹ In 2008, three grand corruption scandals were exposed. First, the Governor of Tanzania’s Central Bank, Daudi Ballali, was fired after an international internal audit discovered over \$100 million USD was paid to local companies, some of which did not even exist, without consideration.⁸⁰ Next, the former Prime Minister, Edward Lowassa, along with two other senior-level ministers in the government, resigned after allegations that they awarded a large-sum contract to a

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*; Mbaku, *supra* note 3, at 19.

⁷⁸ *Id.*

⁷⁹ Emmanuel Muga, *Can Elections Help Tanzania Tackle Corruption?*, BBC NEWS (Oct. 27, 2010), <http://www.bbc.co.uk/news/world-africa-11589013>.

⁸⁰ *Id.*

non-existent electricity company in the United States.⁸¹ Lastly, in April 2008, British and Saudi governments linked BAE, a British arms manufacturer, to commission payments (or bribes) given to individuals in Tanzania to help lobby for the multi-million dollar deal. The scandal allegedly involved the former Attorney General, Andrew Chenge, but Chenge resigned before any charges were brought.⁸²

The attempts at holding those accountable have been less than satisfactory to many Tanzanians. In October 2010, former Finance Minister Basil Mramba, Ministry's Permanent Secretary Gray Mgonja, and former Energy and Minerals Minister Daniel Yona, all faced corruption charges in court, but the substance of any punishment or follow-through is yet to be seen.⁸³ During the 2010 elections, corruption was an enormous issue facing the candidates. Kikwete was forced to defend the little progress being made while the opposition accused the government of settling for prosecuting scapegoats as the senior officials were allowed to resign and avoid accountability.⁸⁴ The 2010 Revenue Watch Index placed Tanzania at the bottom of the list in terms of transparency regarding mining deals and mineral revenues.⁸⁵

C. Anti-Corruption Efforts

The Prevention of Corruption Ordinance was the first piece of anti-corruption legislation in Tanzania and was enacted in 1958. In 1971, it became the Prevention of Corruption Act (PCA).⁸⁶ The PCA established the Anti-Corruption Squad in 1975 and its responsibilities included investigating and prosecuting offences, taking measure to prevent corruption, and advising the government on mechanisms to combat corruption.⁸⁷ In 1991, the Anti-Corruption Squad became the Prevention of Corruption Bureau (PCB). Until 1995, the PCA was the sole piece of anti-corruption legislation and the PCB was the sole enforcement mechanism.⁸⁸

In an attempt to create a comprehensive plan to fight corruption, President Mpaka's administration compiled the "Warioba Report," which would act as a driving agent for the anti-corruption strategy for years.⁸⁹ From the "Warioba Report" the first National Anti-Corruption Strategy and Action Plan (NACSAP) was adopted in 1999.⁹⁰ The NACSAP included measures to remove corrupt leaders,

⁸¹ *Id.*

⁸² Rob Evans and David Leigh, *BAE Corruption Investigation Switches to Tanzania*, THE GUARDIAN (Apr. 11, 2008), <http://www.guardian.co.uk/world/2008/apr/12/bae.baesystems-business>; Muga, *supra* note 79.

⁸³ Muga, *supra* note 79.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ THE PREVENTION AND COMBATING OF CORRUPTION BUREAU, <http://www.pccb.go.tz/index.php/about-pccb/historical-background> (last visited Dec. 5, 2011).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Report of the Presidential Commission of Inquiry Against Corruption ("Warioba Report"), Government of the United Republic of Tanzania (Nov. 1996).

strengthen the Prevention of Corruption Bureau, appoint a minister of good governance, and establish a Commission of Ethics.⁹¹

In May 2008, the Enhanced National Anti-Corruption Strategy and Action Plan (NACSAP II) was launched, aiming to encourage partnerships between the government and the private sector, civil society and the media to assist in the fight against corruption.⁹² The institutions and legislation established and/or strengthened by the NASCAP and NACSAP II are: the Prevention and Combating of Corruption Bureau, the Office of the Director of Public Prosecutions, the Ethics Secretariat, the Inspectorate of Ethics, the National Audit Office, the Commission for Human Rights and Good Governance, the Public Procurement Regulatory Authority, the Public Procurement Appeals Authority, the Good Governance Coordination Unit, and the Financial Intelligence Unit within the Ministry of Finance.⁹³

D. Status of Corruption

The efforts of the NASCAP and NACSAP II are paying off, but corruption remains a significant problem for the country. The 2011 EABI score actually shows an increase in the prevalence of bribery from 2010 to 2011, with the percentage of likelihood in encountering a bribe when accessing public services having risen from 26.8% to 31.6%.⁹⁴ However, both the CPI score and WBGI show moderate improvements since 2000. The CPI score has risen from 2.5 (2000) to 3 (2011) on a scale of 0 to 10 with 0 as most corrupt and 10 as very little corruption.⁹⁵ The WBGI for “control of corruption” scores Tanzania at 37.32 out of 100 in 2011, compared to 14.63 in 2000.⁹⁶

Some of the issues in the fight against corruption in Tanzania are: insufficient enforcement, inadequate safeguards for whistle-blowers, limited public access to government official’s records and public declarations, and a basic lack of power behind the strategy.⁹⁷ President Kikwete has renewed his promise to fight corruption, starting this time with his own party, CCM. He has stated that CCM will dismiss party members who have been linked to corruption scandals.⁹⁸ Until

⁹⁰ Marie Chene, *National Anti-Corruption Strategy in Tanzania*, U4.No (May 14, 2007) <http://www.u4.no/publications/national-anti-corruption-strategy-in-tanzania/>.

⁹¹ *Id.*

⁹² The Enhanced National Anti-Corruption Strategy and Action Plan (NACSAP II) 2008-2011, (The United Republic of Tanzania President’s Office, Good Governance Coordination Unit, May 2008), available at <http://parliament.go.tz/bunge/docs/reports/1251960061.pdf>.

⁹³ Stephanie von Wogau, *Corruption in Tanzania, Civil Society Against Corruption*, AGAINSTCORRUPTION.EU (Dec. 27, 2010), http://www.againstcorruption.eu/uploads/norad/Wogau_Corruption-in-Tanzania.pdf.

⁹⁴ *The East African Bribery Index*, *supra* note 28.

⁹⁵ *Corruption Perceptions Index 2011*, *supra* note 21.

⁹⁶ *Control of Corruption*, *supra* note 26.

⁹⁷ Chene, *supra* note 90.

⁹⁸ Fumbuka Ng'wanakilala, *Tanzania Ruling Party Plans Anti-Corruption Purge*, REUTERS (Nov. 26, 2011, 7:10 AM), <http://www.reuters.com/article/2011/11/26/us-tanzania-politics-graft-idUSTRE7AP0AC20111126>.

now, a number of senior-level party leaders have maintained their top positions in the party even after allegations of corruption and resignations from government posts due to corruption accusations. Only time will tell how serious Kikwete and CCM are about the commitment to cleanse the party of corruption (until now only one senior-level official has voluntarily left the party because of graft), and if their pledge to clean the party of corrupt officials will be effective for the next presidential campaign.⁹⁹

V. RWANDA

A. *Post-Colonial History*

As a colony, Rwanda was under Belgian rule from post-World War I until July 1, 1962 when it became independent.¹⁰⁰ Under colonial rule, Belgium instituted a “racialization” of the local population by issuing identity cards that associated a person with his ethnic group, mainly Hutu or Tutsi.¹⁰¹ The system began to create animosity between the two groups as the Belgians favored the Hutus. After independence, Gregoire Kayibanda, a Hutu and leader of the Parti du Mouvement de l’Emancipation Hutu (Parmehutu) political party, became the first President of Rwanda.¹⁰² Kayibanda led a one-party government that instilled anti-Tutsi programs and was riddled with corruption scandals and inefficiency. In 1972, the military took power by force and Major General Juvenal Habyarimana took over as President. Habyarimana abolished Parmehutu and formed the National Revolutionary Movement for Development (MRND).¹⁰³

Habyarimana’s government remained anti-Tutsi and as a result many Tutsi fled to neighboring countries during both of the first two administrations. After eighteen years in charge and without opposition, Habyarimana gave in to international and public pressures to turn the one-party state into a multi-party state.¹⁰⁴ In October 1990, the Tutsis living in exile formed the Rwandan Patriotic Front (RPF) and began to wage attacks on the Rwandan government and the MRND. The fighting lasted over two years and ended briefly in 1992 with the Arusha Accords.¹⁰⁵

On April 6, 1994, President Habyarimana’s plane was shot down over Kigali, the capital city, and in Kigali violence erupted between the RPF and the Rwandan government. The government was complicit in ordering the systematic killing of

⁹⁹ *Id.*

¹⁰⁰ Rwanda Fact Sheet, U.S. DEPT. OF STATE, <http://www.state.gov/r/pa/ei/bgn/2861.htm> (last visited Jan. 31, 2012).

¹⁰¹ *Id.*

¹⁰² *Id.*; Parmehutu is translated into English as “Party of the Hutu Emancipation Movement.” *Rwanda: Political Parties*, ENCYCLOPEDIA OF THE NATIONS, <http://www.nationsencyclopedia.com/Africa/Rwanda-POLITICAL-PARTIES.html#b> (last visited Jan. 31, 2012).

¹⁰³ *Rwanda: Political Parties*, *supra* note 102.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

any and all Tutsis and moderate Hutus. Over the next four months, genocide ensued, taking the lives of over 800,000 Rwandans and displacing over two million.¹⁰⁶

On July 4, 1994, the RPF took control of Kigali and the genocide ended. The effort to rebuild a nation began. The RPF organized a coalition government called “The Broad Based Government of National Unity,” comprised of eight political parties, but outlawed MRND.¹⁰⁷ Since 1994, the RPF has been the main political party and leader of the coalition government. Paul Kagame of the RPF was elected to a seven-year term as the President of Rwanda on August 25, 2003 and was re-elected in 2010 with 93% of the vote.¹⁰⁸ There have been some allegations of suppression of opposition in 2003 when the transitional National Assembly dissolved the Democratic Republic Party and some of its members disappeared. More allegations came in 2010 during the presidential election with accusations of activities of oppression of opposition, including a murdered journalist, suppression of two newspapers, and murder of a senior political official in the Democratic Green Party.¹⁰⁹

The effects of the genocide are still felt as over 70,000 Rwandans live in neighboring countries and tens of thousands more are in the judicial system (either waiting for trial or serving a prison sentence) for genocide-related crimes. But there has been significant recovery as well, with steady economic growth, progress in combating corruption, and transparency in banking reforms to encourage investment.¹¹⁰

B. Corruption in Rwanda

Over the last ten to fifteen years, Rwanda has made significant progress in the fight against corruption, but it has not been eliminated. The problem remains, particularly at the lower levels of administration. A 2004 report from the Ombudsman’s office, which is in charge of leading the anti-corruption strategy, showed 35% of corruption cases involved district leaders and their assistants, public fund embezzlements, selling of district’s natural resources, mismanagement, and unauthorized bank withdrawals.¹¹¹ In 2004 and 2005, approximately 300 police officers, including senior-level officers, were fired for corruption. In 2005 and 2006, Kagame fired several senior-level officials accused of being involved in corruption and embezzlement.¹¹²

Since the transition period after the genocide, the Rwandan government has remained aggressive in the fight against corruption. Kagame leads a government that follows through on its promises to hold individuals accountable, no matter the ranking or reputation of the person.¹¹³

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Chene, *supra* note 90.

¹¹² *Id.*

¹¹³ *Id.*

C. Anti-Corruption Efforts

There are four primary institutions that Rwanda has created to implement its anti-corruption strategy. The National Tender Board was formed in 1997 to manage and organize the public procurement process and implement the general public procurement policy on behalf of the government.¹¹⁴ The Anti-Corruption Unit within the Rwanda Revenue Authority has instituted a Code of Conduct, internal disciplinary measures, and a culture to promote integrity within the institution.¹¹⁵ The Auditor's General's Office (OAG) was established in 1999 to provide audits of government adherence to fiscal controls.¹¹⁶

Lastly and most recently, the Ombudsman's office was created in 2004 to monitor transparency and regulatory compliance in all government sectors and to expose fraud, corruption and malpractice.¹¹⁷ The multi-pronged approach to create more transparency and accountability is similar to the approaches employed by Kenya and Tanzania but the difference seems to be in the meaningful implementation. The Chairperson for the Ombudsman's Office credited the progress to the removal of corrupt leaders, more training and education, and decentralizing the anti-corruption strategy.¹¹⁸

D. Status of Corruption

Rwanda has shown unprecedented success in tackling the problem of corruption relative to other countries in the region. In 2010, the likelihood of encountering a bribe in accessing public services was 6.6%. In 2011, that percentage dropped to 5.1%.¹¹⁹ Transparency International's CPI score in 2011 was 5, on a scale of 0 to 10.¹²⁰ The WBI for "control of corruption" scored Rwanda at 30.73 (out of 100) in 2000, with significant improvement in 2011 at 70.81.¹²¹

As a result of Rwanda's success in fighting corruption, there are few current news stories on corruption, and even fewer that are big enough to reach the scale of the grand corruption scandals seen in Kenya and Tanzania in recent years. However, the incidents do exist. In July 2011, an investigation led to the prosecution of 223 people, including senior government officials, for stealing public funds of \$5 million USD.¹²² Because of their success fighting corruption, Rwanda's efforts are taking the next step in the fight against corruption and pushing the laws further to allow more mechanisms for recovering stolen assets.¹²³

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *The East African Bribery Index, supra* note 28.

¹²⁰ *Corruption Perceptions Index 2011, supra* note 21.

¹²¹ *Control of Corruption, supra* note 26.

¹²² Berna Namata, *Rwanda Pushing for Law to Recover Stolen Assets*, THE EAST AFRICAN (Dec. 12, 2011), <http://www.theeastafrican.co.ke/news/Rwanda+pushing+for+law+to+recover+stolen+assets/-/2558/1287186/-/vd7g2dz/-/>.

¹²³ *Id.*

VI. COMPARISONS WITHIN THE REGION

A. Scores Compared Across Countries

While each country has proven unique in its fight against corruption, analyzing the scores across the region can provide a larger perspective on the status of corruption in East Africa.¹²⁴ Table 1 makes the similarities and differences become more apparent.

Table 1

Country	% of Bribery Prevalence 2010 ¹²⁵	% of Bribery Prevalence 2011 ¹²⁶	CPI Index (2000) ¹²⁷	CPI Index (2011)	WBG – Control of Corruption (2000) ¹²⁸	WBG – Control of Corruption (2010) ¹²⁹
Kenya	31.9%	28.8%	2.1	2.2	14.63	18.66
Tanzania	26.8%	31.6%	2.5	3	14.63	37.32
Rwanda	6.6%	5.1%	N/A	5	30.73	70.81
United States	N/A	N/A	7.8	7.1	92.68	85.65

Rwanda leads the fight against corruption with the lowest levels of bribery (according to the EABI). In the WBG scores, Rwanda is closer to the United States than it is to either Tanzania or Kenya.¹³⁰

¹²⁴ It is vital to note that East Africa as a region includes the countries of Kenya, Tanzania, Rwanda, Uganda and Burundi. This paper focuses only on Kenya, Tanzania and Rwanda to provide a sample from the region and is not comprehensive.

¹²⁵ *The East African Bribery Index*, *supra* note 28. The aggregate index is derived from a combination of all the individual indicators. The index is derived from the following individual components: likelihood of bribery, prevalence of bribery, average size of bribe, share of bribery and size of bribery. Institutional ranking is based on a score of between 1 and 100 (100 being the most unfavorable).

¹²⁶ *Id.*

¹²⁷ *Corruption Perceptions Index 2011*, *supra* note 21. CPI Score relates to perceptions of the degree of corruption as seen by business people, risk analysts and the general public and ranges between 10 (highly clean) and 0 (highly corrupt). *See id.*

¹²⁸ *Control of Corruption*, *supra* note 26. The World Bank Worldwide Governance Indicator Rankings have been rounded to the nearest tenth for the convenience of this paper. The Control of Corruption Index reflects “perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests.” *Worldwide Governance Indicators: Frequently Asked Questions*, THE WORLD BANK, <http://info.worldbank.org/governance/wgi/faq.htm> (last visited Jan. 31, 2012).

¹²⁹ *Control of Corruption*, *supra* note 26.

¹³⁰ The United States has been included as a benchmark representative of Western democracies and developed countries.

Through discussions of history, politics, and economics, it is clear that there are many factors contributing to the scores of corruption. According to the scores, Kenya appears to be struggling with corruption more than Tanzania and Rwanda, with less gain on both the CPI score and WBI score. However, Tanzania is the only country of the three whose prevalence of bribery has increased in the last year. Kenya and Tanzania, according to all three of the measures, are dealing with similar levels of corruption, while Rwanda has effectively dealt with the problem of corruption.

B. Possible Explanations for Similarities and Differences

Just as there are a variety of factors that can be argued to cause corruption, there are numerous reasons for the differences between Kenya, Tanzania and Rwanda and their past and current levels of corruption. Some of the possibilities include the size of the country, the ethnic diversity of the population, the strength of the political parties, and the size of economic disparities. Numerous factors also explain the success or failures of each country's anti-corruption programs, including the amount of political will and commitment, civic participation in the government, witness protections for those who report corruption, and faith (or lack thereof) in a system of accountability. Equally as important to understanding the causes of corruption and factors effecting anti-corruption mechanisms is remembering the difficulties in measuring corruption. Often, the public relies on the media to expose grand corruption scandals. In both Kenya and Rwanda, Freedom House has listed the media outlets as "not free," meaning there exist government restraints in what can be reported.¹³¹ Exposure of corruption scandals and the extent of corruption throughout society is a critical step in combating the problem.

There are observations that may help explain the differences between the three countries. Kenya seems to be unique in its struggle of tribalism and patronage politics— particularly in comparison to Tanzania—thanks to Nyerere and his push for a national identity. Kenya also suffers from a history of land rights issues during colonization that may have led to patronage in compensation immediately following independence. Tanzania has been disadvantaged from both the legacy of socialism and extreme government involvement in the economy, as well as one dominant political party that governed without checks and balances since independence. Rwanda's tragic history certainly sets it apart. The task of rebuilding a nation after genocide left no tolerance for corruption. The zero tolerance was paired with a legitimate commitment from the government to hold those involved with corruption accountable, no matter the level of government involved. The transparency and coalition building required for healing the nation after the genocide also served to prevent corruption from taking root in the new government.

VII. IMPLICATIONS FOR THE EAST AFRICAN COMMUNITY

A. Background & Anti-Corruption Efforts

The East African Community (EAC) was formed originally in 1967 and reinstated in 1996. The original members were Uganda, Kenya and Tanzania, with

¹³¹ George B.N. Ayittey, *Combating Corruption in Africa: Analysis and Context*, in *CORRUPTION AND DEVELOPMENT IN AFRICA: LESSONS FROM COUNTRY CASE-STUDIES* 111, 113, (Kempe Ronald Hope, Sr. & Bornwell C. Chikulo eds., Palgrave, 2000).

Rwanda and Burundi joining in 2007.¹³² The EAC was created to form comprehensive tariff regulations, ease the flow of people throughout the region, and improve regional infrastructure.¹³³ The formation of meaningful policies and implementation of any policies has been slow, as some countries are apprehensive to opening their markets and becoming vulnerable, particularly with Kenya's dominating economy.¹³⁴ The Customs Union and Common External Tariff was established in January 2005, but has yet to be implemented.¹³⁵

The East African Association of Anti-Corruption Authorities was formed on September 28, 2007 to provide comprehensive strategies to combat corruption in the region.¹³⁶ Also relevant to the regional fight against corruption, the East African Business Council produced "The State of Corporate Governance and Anti-Corruption in East Africa Partner States," attempting to set a starting point for the region to address problems of corruption as it affects business and economic growth.¹³⁷

B. Implications

As the plans for a unified East African Community move forward, resulting in fewer restrictions on imports and exports between countries, a more mobile workforce that can move throughout the region, and the possibility of a common currency, there are certainly many issues left to iron out.¹³⁸ And given the differences on the control of corruption between Kenya, Tanzania and Rwanda, corruption should certainly be considered. Rwanda may not have significant influence, being one of the smaller countries in the EAC, but its anti-corruption mechanisms and commitment to the fight against corruption are impressive.

VIII. THE ROLE OF THE INTERNATIONAL COMMUNITY

The international community has had some success in influencing countries to prioritize good governance and anti-corruption commitments over the past decades. There are a number of ways in which the international community can continue to encourage good governance. The international community can keep an active interest in tracking funds from international organizations to ensure they are used effectively. Aid agencies can fund programs specifically directed at fighting

¹³² *Kenya Fact Sheet*, *supra* note 35. For purposes of this paper, Uganda and Burundi were not included in the analysis, but are members of the East African Community.

¹³³ *Id.*

¹³⁴ GUY ARNOLD, A GUIDE TO AFRICAN POLITICAL AND ECONOMIC DEVELOPMENT 102 (2001).

¹³⁵ *Kenya Fact Sheet*, *supra* note 35.

¹³⁶ EAST AFRICAN ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES, <http://www.eaaaca.org/about.htm> (last visited on Jan. 31, 2011).

¹³⁷ *The State of Corporate Governance and Anti-Corruption in East Africa Partner States*, EAST AFRICAN BUSINESS COUNCIL (Oct. 2008), http://www.cbglobal.org/CBGG_rary/Corruption_Governance%20SurveyofEACStates.pdf.

¹³⁸ John Lavelle, *Resurrecting the East African Shilling*, ALL AFRICA (July 8, 2008), <http://allafrica.com/stories/200807071183.html>.

corruption, improving transparency¹³⁹ The corporate side of international business can assist by promoting policies internally that prohibit employees from paying bribes and establishing procedures to reports corruption. The United Nation, World Bank, IMF and others can use international law to establish new international institutions for reform and oversight of corruption.¹⁴⁰ Kenya, Tanzania and Rwanda have all signed the African Union Convention on Preventing and Combating Corruption, as well as the United Nations Conventions Against Corruption.¹⁴¹ International pressures can help keep countries committed to establishing good governance, particularly through leading by example and keeping signatory countries accountable for anti-corruption conventions.

The International Monetary Fund (IMF) influences borrower countries by holding that countries must comply with IMF regulations to borrow money. In the past, the IMF has put pressure on both Kenya and Tanzania to institute reforms and show a commitment to fighting corruption in order to resume borrowing.¹⁴² The World Bank requires that countries sign a “no-bribery” pledge as a pre-requisite to receive funds. While the pledge may seem simply procedural, it can be used to impose sanctions and at least provides an upfront understanding that the World Bank has a zero-tolerance policy for corruption.¹⁴³

IX. CONCLUSIONS AND RECOMMENDATIONS

“Power tends to corrupt and absolute power corrupts absolutely.”¹⁴⁴ This historical quote by Lord Acton in 1887 has been applied countless times over the last century. The analysis of corruption in East Africa is another example of the statement’s accuracy. In Kenya, Tanzania and Rwanda, each unique history allowed an opportunity for a single political party to grab hold of the power over the state without viable opposition to keep the power in check, resulting in a flourishing culture of corruption.

But more important than finding the historical root of corruption is determining which factors allow it to continue. The biggest difference between Kenya and Tanzania (both countries that continue struggling with corruption on a large scale) and Rwanda is the commitment of the current government to good governance, transparency and accountability. Each country will require a unique strategy to fight corruption and its particular causes in their society. But certainly the strategy must be holistic in its approach, address both procedural and substantive mechanisms, and remain meaningful in its implementation.¹⁴⁵ A successful anti-corruption plan

¹³⁹ World Bank, IMF, UN Development Programme, and many others already do this.

¹⁴⁰ ROSE-ACKERMAN, *supra* note 10, at 178; Wei, *supra* note 30, at 22.

¹⁴¹ EAST AFRICAN ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES, *supra* note 136.

¹⁴² Otieno, *supra* note 41, at 1.

¹⁴³ ROSE-ACKERMAN, *supra* note 10, at 181.

¹⁴⁴ Letter from Lord Acton to Bishop Mandell Creighton (Apr. 5, 1887), in *Historical Essays and Studies* (J. N. Figgis and R. V. Laurence eds., London: Macmillan, 1907), available at http://oll.libertyfund.org/index.php?option=com_content&task=view&id=1407&Itemid=283.

¹⁴⁵ James Thuo Gathii, *Corruption and Donor Reforms: Expanding the Promises and Possibilities of the Rule of Law as an Anti-Corruption Strategy in Kenya*, CONN. J. INT’L L. 14, 407-53, 408.

requires buy-in and political capital from all levels of the government, from the President's office to the district administrators.¹⁴⁶ Serious approaches to tackle the problem of corruption must lay down realistic and measurable goals and not just empty promises of broad unattainable reform.¹⁴⁷

Local history, political will, institutional capacity, and the commitment to hold corrupt individuals accountable are all variables in the type of strategy and success of anti-corruption plans. Hopefully this analysis of the history of corruption and politics in Kenya, Tanzania and Rwanda provides some insight into the complexity of corruption and some factors that could explain various degrees of success of anti-corruption strategies. Corruption is a disease to development, both social and economic, and requires serious commitment to end. But with dedication and political will, its damaging effects can be reduced.

¹⁴⁶ Otieno, *supra* note 41, at 2.

¹⁴⁷ Chene, *supra* note 90, at 3.

SOUTH KOREAN FREE TRADE AGREEMENTS: U.S. AND E.U.

ROBERT MOLNAR[†]

The United States and South Korea are moving closer to establishing a free trade agreement between the two countries. The full text of the proposed agreement is available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text>. The two countries originally signed the treaty in 2007, but its approval in the U.S. stalled when the auto industry objected to the level of access it would receive to the South Korean market.¹ Three years later, President Barack Obama re-committed the U.S. to the treaty and reached a new agreement by the end of the year. The Treaty would be the largest free trade agreement signed by the U.S. since the North American Free Trade Agreement of 1994 (NAFTA), and is the first bilateral agreement between the United States and a major Asian economy.²

The European Union signed a free trade agreement with South Korea on October 6, 2010. The European Parliament ratified the agreement in February of this year and the agreement became law in July. The agreement is designed to decrease trade barriers between South Korea and the EU by 98% over the next five years.³ Senator Rob Portman of Ohio has cited the EU-South Korea free trade agreement as already successful at boosting imports from the EU to South Korea, and has urged passage of the U.S.-South Korea agreement.⁴ Scott A. Snyder of the Council on Foreign Relations has claimed that the agreement will create new American business opportunities in South Korea.⁵

Sherrod Brown, Ohio's other U.S. Senator, has urged President Obama not to submit any free trade agreements to Congress until Congress approves an extension of Trade Adjustment Assistance ("TAA"), a federal government program that helps American workers whose jobs are sent overseas. Brown, a critic of past free trade

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¹ *S. Korea Willing to Discuss U.S. Concerns About Auto Trade: Lee*, ASIAN POL. NEWS (Nov. 23, 2009), <http://www.thefreelibrary.com/S.+Korea+willing+to+discuss+U.S.+concerns+about+auto+trade%3A+Lee.-a0212699307>.

² Choe Sang-Hun, *U.S. and South Korea Sign Free-Trade Agreement*, N.Y. TIMES (April 2, 2007), <http://www.nytimes.com/2007/04/02/world/asia/02iht-fta.1.5110252.html>.

³ Press Release, European Parliament, *E.U.-South Korea Free Trade Agreement Passes Final Hurdle in Parliament* (Feb. 17, 2011), <http://www.europarl.europa.eu/en/pressroom/content/20110216IPR13769/html/EU-South-Korea-free-trade-agreement-passes-final-hurdle-in-Parliament>.

⁴ Sabrina Eaton, *Sen. Rob Portman Says Trade Agreement With S. Korea Helped E.U. Exports Jump at U.S. Expense*, CLEVELAND.COM (Sept. 22, 2011, 11:04 AM), http://www.cleveland.com/open/index.ssf/2011/09/sen_rob_portman_says_trade_agr.html.

⁵ Scott A. Snyder, *KORUS-FTA and the Need for a U.S. Trade and Investment Policy*, COUNCIL ON FOREIGN RELATIONS (Sept. 21, 2011, 5:31 PM), <http://blogs.cfr.org/asia/2011/09/21/korus-fta-and-the-need-for-a-u-s-trade-and-investment-policy/>.

agreements, introduced legislation to extend TAA benefits in the Senate, which passed the bill on September 22, 2011.⁶

Earlier this year, *The American Lawyer* reported that several large American law firms have expressed an interest in opening offices in South Korea.⁷ However, expansion of legal services in South Korea may have more to do with the deregulation of legal training by the South Korean government than the pending trade agreement.⁸

⁶ Press Release, Brown's Amendment Extending Trade Adjustment Assistance Passes Senate (Sept. 23, 2011), http://brown.senate.gov/newsroom/press_releases/release/?id=F0787736-704A-4633-8D3C-D7D1B51B1DFC.

⁷ Bryan Baxter, *Clifford Chance, DLA Piper Look to New Asian Locales*, THE AM. LAWYER ONLINE (March 28, 2011), <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202487952324>.

⁸ *Id.*

HAS JUSTICE FINALLY ARRIVED FOR THE DRC?

LINDSAY RASKIN[†]

The conflict in the Democratic Republic of the Congo (DRC) now ranks as the world's deadliest conflict since World War II. Since its outbreak in August 1998, fighting between the factions has led to the deaths of approximately 5.4 million people and created a refugee crisis with more than 1.5 million displaced.¹ A profound product of this violence, fueled by intrinsic cultural norms in the DRC, is rape. The international community considers the DRC the rape capital of the world. Current studies estimate that 1.8 million women in the DRC are raped during their lifetime at a rate of 48 rapes every hour.²

On August 12, 2011, the DRC's parliament finally took action by adopting legislation creating a specialized court to hear cases of war crimes, crimes against humanity and genocide committed in the DRC since 1990.³ While many human rights advocates consider the action taken by parliament a triumph, it is unclear whether a specialized tribunal is the most effective forum for victims of these humanitarian crises. The international community tends to favor specialized tribunals, which have been seen in East Timor and Cambodia, because the country where the conflict occurs bears the burden of providing the majority of funding for the tribunal as well as the majority of the tribunal's staff.⁴

Despite recent action, rape continues to be one of the most common crimes committed in the DRC, and reporting its commission is still taboo in Congolese society.⁵ Women who are raped are viewed as "dirty" and are often forced to "weigh [their] desire for justice against the social consequences."⁶ Thus, despite the strides

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¹ See Anup Shah, *The Democratic Republic of the Congo*, GLOBAL ISSUES, <http://www.globalissues.org/article/87/the-democratic-republic-of-congo> (last updated Aug. 21, 2010). The instability caused by the warring parties has contributed to the overwhelming majority of deaths—not by weapons—but by preventable diseases, including malaria, diarrhea, pneumonia, and malnutrition.

² See *New Laws Have Little Impact on Sexual Violence in DRC*, SAFE WORLD FOR WOMEN (JUNE 7, 2011), <http://www.asafeworldforwomen.org/war-zones/drcongo/746-dr-congo-new-laws-against-rape-have-little-impact.html>. See also *UN Official Calls DR Congo 'Rape Capital of the World'*, BBC, <http://news.bbc.co.uk/2/hi/8650112.stm> (last updated April 28, 2010, 17:50 BST).

³ See Emmanuel Chaco, *Congo-Kinshasa: Specialised Court for Serious Human Rights Abuses*, ALLAFRICA (Sept. 14, 2011), <http://allafrica.com/stories/201109140606.html>.

⁴ See generally Ben Kiernan, *The Demography of Genocide in Southeast Asia: The Death Tolls in Cambodia, 1975-79 and East Timor, 1975-80*, 35 *Critical Asian Stud.* 585 (2003), available at <http://www.yale.edu/gsp/publications/KiernanRevised1.pdf>.

⁵ See *Case Study: Women Find Support in Survival*, USAID, http://www.usaid.gov/stories/drc/cs_drc_rape.html (last updated May 6, 2009).

⁶ See SAFE WORLD FOR WOMEN, *supra* note 2.

the DRC has made in recent years, the country currently lacks the infrastructure and support programs for the victims of these crimes. If women are unwilling to come forward, how can they ever receive justice? Furthermore, not even the ICC is a suitable forum for justice for the victims of rape. While the Lubanga case is the first case in which the ICC allowed victims to participate, the names of those who participate in trials at the ICC are widely known.⁷ Thus, the victims of rape who testify will face the same social consequences—namely the risk of being ostracized from their community—that they would have faced if they participated in a case in the DRC. Rather than rushing to appease the international community, the DRC, as well as the international community as a whole, should take the time to create an effective forum, such as an ad hoc tribunal, which can protect the identity of rape victims who testify in court and focus on building a system of support and acceptance to aid these victims.

⁷ Christine H. Chung, *Victims' Participation at the International Criminal Court: Are Concessions of the Court Clouding the Promise?*, 6 NW. J. INT'L HUM. RTS., 459, 500 (2008), available at <http://www.law.northwestern.edu/journals/jhr/v6/n3/4/Chung.pdf>.

THE EUROPEAN COMMISSION WANTS THE FINANCIAL SECTOR TO PAY

T. CHRISTINA COLOSIMO[†]

After the global economic crisis, the European Union's (EU) economy has suffered one of the worst recessions since the 1930s. The financial sector played a major role in the EU's economic crisis starting in 2007 with a steady increase of failing banks.¹ EU governments and citizens committed €4.6 billion in an effort to support and rescue the financial sector with taxpayer funded bailouts.²

The European Commission's (Commission) response to the recession has been swift and proactive. On September 28, 2011, the Commission announced a proposal for a financial transaction tax (FTT) for the 27 Member States as a resource for the EU's budget.³ The Commission's proposal for the FTT is available at [http://ec.europa.eu/taxation_customs/resources/documents/taxation/other_taxes/financial_sector/com\(2011\)594_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/other_taxes/financial_sector/com(2011)594_en.pdf). The proposal requires unanimous support from the 27 Member States, and if approved by all, it would levy a tax on transactions involving financial instruments between institutions if at least one party is located in the EU.⁴ The tax rate for the exchange of shares and bonds is set at 0.1% and a rate of 0.01% on derivative contracts.⁵

The Commission has considered a financial transaction tax since the bailouts. The financial sector's contributing role in the financial crisis has piloted the proposal and will ensure that the financial sector contributes at a time of fiscal need. The proposed FTT will raise revenue of €57 billion (\$78 billion) in one year, and the tax will strengthen the EU single market.⁶ The FTT is also designed to create a disincentive for transactions that do not enhance the efficiency of the financial markets and will prevent a future crisis.

European governments are split over the merits of the proposed financial transaction tax. Some fear that the tax may drive business away from the EU,

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¹ See *Economic Crisis in Europe: Causes, Consequences and Responses*, EUROPEAN COMMISSION (July 2009), available at http://ec.europa.eu/economy_finance/publications/publication15887_en.pdf.

² *Id.*

³ Press Release, European Commission, Financial Transaction Tax: Making the Financial Sector Pay (Sept. 28, 2011), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1085&format=HTML&aged=0&language=en&guiLanguage=en> [hereinafter Commission Press Release].

⁴ Rebecca Christie, *EU proposes Financial Tax-to Start in 2014*, BLOOMBERG NEWS (Sept. 28, 2011, 10:52 a.m.), <http://www.businessweek.com/news/2011-09-28/eu-proposes-financial-transactions-tax-to-start-in-2014.html>.

⁵ *Id.*

⁶ Commission Press Release, *supra* note 3.

increase the cost of raising capital and damage member states' economies.⁷ The UK believes that the Commission needs to realign its focus on growth during the recession, rather than implementing a tax that will push the financial sector abroad to New York and Singapore.⁸ Financial Times Newspaper also reported that the proposal could shrink EU's gross domestic product by 1.76 percent over time.⁹ The Commission reconvenes in November at the G20 meeting in Cannes, and it will offer more details on the proposal's status.

⁷ *Transaction Tax Proposal Divides Eu States*, DEUTCHE WELL-WORLD.DE (Sept. 9, 2011), <http://www.dw-world.de/dw/article/0,,15424378,00.html>.

⁸ See Commission Press Release, *supra* note 3. See also Jamie Grierson and Geoff Meade, *UK Opposes EU Transaction Tax*, THE INDEPENDENT (Sept. 28, 2011), <http://www.independent.co.uk/news/world/europe/uk-opposes-eu-financial-transaction-tax-2362227.html> (stating that the UK government rejected similar proposals raised by its French and German counterparts in September 2010).

⁹ *Id.*

FOR THE OPENING ACT: A GREEK TRAGEDY

ERIK M. DICKINSON[†]

On October 27, 2011, after months of uncertainty and growing fears, European leaders reached a three-pronged agreement¹ designed to lower Greece's debt burden and prevent the crisis from escalating by spreading to other Eurozone states² and potentially crippling the European Union and others on the global market. In the few weeks that have followed, many, including the Greeks, have questioned Greece's place in Europe, a prime minister has resigned, and questions remain.

First, private investors agreed to take a 50% loss on their Greek bonds.³ As a result, Greece's debt will be reduced from the current rate of 160% of its GDP to 120% by 2020.⁴ Second, banks will be required to raise around €106 billion in new capital by June 2012.⁵ The goal is that the new capital will protect the banks, as well as larger economies, from any government defaults.⁶ Finally, the Eurozone member states agreed to increase the lending capacity of the European Financial Stability Facility (EFSF)⁷ from €440 billion to over €1 trillion.⁸

The EFSF bailout fund could be leveraged in a handful of ways. Insurance could be offered to debt purchasers⁹ thereby making the bonds more attractive to investors.¹⁰ Another proposal with support is to create special investment vehicles to

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¹ See *Leaders Agree Eurozone Debt Deal after Late-Night Talks*, BBC NEWS (Oct. 27, 2011, 5:30 ET), <http://www.bbc.co.uk/news/world-europe-15472547> [hereinafter *Leaders Agree*].

² See *id.* Of the 27 EU members, only 17 are currently parties to the common European currency, the Euro.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See *About EFSF*, EUROPA.EU, <http://www.efsf.europa.eu/about/index.htm> (last visited Oct. 27, 2011). The EFSF was created by the euro area member states, within the framework of the Ecofin Council, in May 2010. The purpose of the EFSF is to maintain financial stability by providing financial assistance to euro area member states.

⁸ *Leaders Agree*, *supra* note 1.

⁹ See *Euro Deal Leaves Much to Do on Rescue Fund, Greek Debt*, REUTERS (Oct. 27, 2011, 3:44 PM), <http://www.reuters.com/article/2011/10/27/us-eurozone-idUSTRE79I0IC20111027>.

¹⁰ See *Eurozone Crisis Explained*, BBC NEWS (Oct. 27, 2011, 2:19 ET), <http://www.bbc.co.uk/news/world-europe-15472679>.

allow big investors, including countries like China, to contribute.¹¹ Most likely, these and other options would be used simultaneously.

Moving forward from this agreement, EU leaders continue their calls for more stringent financial reform and now square their focus on Italy, the Eurozone's third largest economy.¹² Recently, German Chancellor Merkel and French President Sarkozy criticized Italian Prime Minister Berlusconi for his reluctance to follow through with promised budget cuts and other economic reforms.¹³ EU President Van Rompuy specifically noted that the main concern for Italy is implementation of Berlusconi's proposals.¹⁴ Even as this crisis may be averted for now, the looming question of Italy tempers enthusiasm for this agreement and highlights the balancing act for Europe's leading economies as they continue charting a path to a more robust unity, continued cooperation, or disappointing abandonment of the EU.

¹¹ *Id.*

¹² See *Europe Agrees to Basics of Plan to Resolve Euro Crisis*, N.Y. TIMES, (Oct. 26, 2011), <http://www.nytimes.com/2011/10/27/world/europe/german-vote-backs-bailout-fund-as-rifts-remain-in-talks.html?pagewanted=2&ref=europeansovereigndebtcrisis>.

¹³ *Id.*

¹⁴ *Id.*

UNLIKE IN IRAQ AND AFGHANISTAN, THE U.S. APPEARS TO BE TAKING A HANDS-OFF APPROACH TO LIBYA

PAUL SHUGAR[†]

Since a 27-year-old Muammar Qaddafi seized control in 1969, Libya has known no other leader.¹ While his relationship with the United States could best be described as neutral in the 1970s, it soured in the 1980s when terrorist attacks in Europe were linked to the dictator.² After U.S. President Ronald Reagan deemed Qaddafi “the mad dog of the Middle East,” U.S. warplanes struck Benghazi and Tripoli in 1986.³ Further Qaddafi-sponsored terrorist acts led to Great Britain and France joining the U.S. in imposing United Nations sanctions on Libya.⁴ The U.S.-Libya relationship remained tense until 2003, when Libya renounced its weapons of mass destruction program after the U.S. invasion of Iraq.⁵ The two countries rekindled diplomatic relations in 2006,⁶ but that relationship ended when the U.S. joined the NATO-led operation to overthrow Qaddafi in March of 2011.⁷ Now, the U.S. is left to forge a new relationship with Libya after Qaddafi’s death.

While the U.S. congratulated Libya on its freedom, the U.S. has not clearly defined what its role will be in rebuilding the war-torn country.⁸ After watching Iraq spiral out of control following the ouster of Saddam Hussein, the U.S. appears more than willing to take a back seat to NATO.⁹ Billions of U.S. dollars have been spent rebuilding Iraq and Afghanistan, but the U.S. has sent only \$135 million in aid to Libya.¹⁰ The State Department also announced that it has sought no new congressional funding for aid to Libya.¹¹

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¹ See *Muammar al-Qaddafi Biography*, BIOGRAPHY.COM, <http://www.biography.com/people/muammar-al-qaddafi-39014> (last visited Nov. 1, 2011).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See Missy Ryan and Phil Stewart, *After Gaddafi, Can U.S. Keep Libya at Arm's Length?*, REUTERS.COM (Oct. 20, 2011, 5:57 PM), <http://www.reuters.com/article/2011/10/20/us-usa-libya-future-idUSTRE79J8KW20111020>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Whether U.S. companies end up investing in Libya likely will depend on how quickly the country becomes secure again.¹² Firms that construct or maintain oil fields are currently the only American companies doing business in Libya.¹³ But whom will seize control of Libya's lucrative oil fields remains to be seen as the country continues to form its new government.¹⁴ A process that should take time with Libya lacking numerous government organizations,¹⁵ but – unlike in Iraq and Afghanistan – the U.S. appears disinterested in attempting to expedite this process.

¹² *Id.*

¹³ *Id.*

¹⁴ See *Factbox: Who's in Charge of Libya's Oil Industry?*, REUTERS.COM (Sep. 8, 2011, 7:14 AM), <http://www.reuters.com/article/2011/09/08/us-libya-oil-personnel-idUSTRE7872BP20110908>.

¹⁵ See Ryan and Stewart, *supra* note 7.

WOULD A BIG BAD BANK BLOW THE REAL ESTATE PROBLEMS OF SPAIN DOWN?

CHRISTOPHER J. STUART[†]

On November 20, 2011 Spain elected Mariano Rajoy, of the conservative People's Party, as prime minister.¹ During his campaign he claimed that "cleanup and restructuring" of the banking system in Spain was his primary concern.² Rajoy pledged to adopt a program to fund Spain's recovery by increasing the amount of available credit.³ With the current financial troubles in the Eurozone, reviving Spain's banks could be a daunting task for the newly elected prime minister. The BBC reports that "Spain is[a] much more indebted or leveraged country than Italy" when aggregating all debts including government, corporate, financial, and institution debts.⁴

To fix the financial issues of Spain, Rajoy must conquer the seemingly insurmountable amount of troubled real estate loans held by the country's lenders.⁵ The Bank of Spain stated that half of the €308 billion of real estate loans are classified as troubled.⁶ These problems seem to stem from the decreasing values of Spanish homes, which have decreased by 28 percent on average since April 2007.⁷ Pablo Cantos, a managing partner of MaC Group who advises Spanish banks on risk, claims that about €30 billion of real estate held by Spanish banks are "unsellable."⁸ The future for Spanish real estate assets remains bleak as Taurus Iberica Asset Management--a Spanish mortgage servicer--reports that financial institutions have foreclosed on 200,000 homes and the foreclosures will rise to 600,000 homes due to

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¹ See Sharon Smyth, *The Real Threat Facing Spanish Lenders: Spain's Banks Hold Billions of Euros in Property That Will Be Tough to Sell*, BUSINESSWEEK.COM (Nov. 23, 2011, 5:00 PM EST), <http://www.businessweek.com/magazine/the-real-threat-facing-spanish-lenders-11232011.html>.

² *Id.*

³ See Charles Penty & Emma Ross-Thomas, *Spain Set to Purge Banks of Property Hangover*, BLOOMBERG.COM (Nov. 16, 2011 4:51 AM EST), <http://www.bloomberg.com/news/2011-11-16/spain-set-to-purge-banks-of-real-estate-hangover-euro-credit.html>.

⁴ See Mike "Mish" Shedlock, *Spanish Banks Are Stuck With 'Unsellable' Property And 50% Troubled Real Estate Loans*, BUSINESSINSIDER.COM (Nov. 19, 2011), http://www.articles.businessinsider.com/2011-11-19/markets/30418837_1_real-estate-loans-medium-size-banks-madrid.

⁵ *Id.*

⁶ *Id.*

⁷ See Sharon Smyth, *Spanish Banks Have \$41 Billion of 'Unsellable' Real Estate*, BUSINESSWEEK.COM (Nov. 30, 2011, 6:47 AM EST), <http://www.businessweek.com/news/2011-11-30/spanish-banks-have-41-billion-of-unsellable-real-estate.html>.

⁸ *Id.*

the increase in unemployment.⁹ Fernando Acuan Ruiz, managing partner of Taurus Iberica, stated that Spain has 1 million new homes that will not be consumed until 2017.¹⁰

A solution to Spain's bank problems may lie in facilitating a "bad bank" according to some analysts.¹¹ Creating a "bad bank" would relieve banks of their toxic real estate assets and the bad bank would attempt to sell the assets as prices improve.¹² Fernando Fernandez, IE professor and former International Monetary Fund economist, believes that a bad bank is the only cure to clean up bank balance sheets and revive the flow of credit.¹³ A bad bank worked well in Ireland because it restored confidence to investors.¹⁴ However, creating a bad bank in Spain with the current financial troubles of the euro zone could be a disaster according to analysts.¹⁵ One London-based analyst believes that the additional debt that will encumber Spain will be more than it can afford.¹⁶ Prior to the election, Rajoy did not support a bad bank program, but sources have stated that Rajoy "has asked for at least two papers from academics on how to create" a bad bank.¹⁷ While which solution Rajoy will ultimately employ to resolve the Spain's financial issues is uncertain, the current financial outlook remains very grim.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See* source cited *supra* note 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *See* Sonya Dowsett, *More Bank Bail-Outs Loom for New Spanish Government*, REUTERS.COM (Nov. 24, 2011, 7:50 AM EST), <http://www.reuters.com/article/2011/11/24/spain-banks-idUSL5E7MN1HQ20111124>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* Charles Penty, Emma Ross-Thomas, & Sharon Smyth, *Spain's Rajoy Said to Ask for Proposals on Creating Bad Bank*, BUSINESSWEEK.COM (Nov. 27, 2011, 7:37 AM EST), <http://www.businessweek.com/news/2011-11-27/spain-s-rajoy-said-to-ask-for-proposals-on-creating-bad-bank.html>.

THE RESULTS OF HUMAN TRAFFICKING RIGHT BEFORE YOUR EYES: CHILDREN FORCED INTO PANHANDLING TO APPEAL TO TOURISTS

LODEMA M'PKO[†]

You've just completed a satisfying shopping trip at Sandton City Mall in Johannesburg, South Africa. After throwing your numerous bags in the car, you begin the trek back to your hotel. "What an amazing vacation this is," you think to yourself, as you approach a traffic light. However, your warm fuzzy feelings dissipate as a young woman, dressed in tattered and dirty clothing, stands tapping at your window at just the appropriate angle to display the small, peaked-looking child strapped to her back. She smiles, waves, and puts her hand to her mouth, signaling that she is hungry. Feeling guilty about all of the money you just spent shopping, your heartstrings are officially tugged. You reach into your bag, and hand her a crisp bill. She thanks you and moves on to the next car. Your fuzzy feelings return, since you made it possible for a mother and child to finance their next meal. You feel good about your deed. The question is, should you?

Probably not. It's likely that you've been scammed. Most people think child human trafficking is done for sexual purposes. However, using children to panhandle unsuspecting tourists is becoming increasingly popular. Panhandlers know that using children garners sympathy and can be very lucrative. So much so that children are often rented out, kidnapped, or lured away from their homes.

In South Africa, police investigated a crime syndicate that involved panhandlers renting babies and small children from crèches for about \$3 per day.¹ A crèche is a public daycare for the poor that cares for the children while the mothers are at work.² Children are also rented directly from the mothers. In these cases, older children's legs are sometimes broken so that the children appear smaller than what they are when tied to the 'mother's' back. Smaller children garner more sympathy. Children may also be drugged so that they appear sickly.³ This practice can net up to nearly \$70 per day.⁴

Child trafficking for panhandling purposes is not limited to South Africa. It is increasingly popular in other third-world countries as well. For instance, in India, gangs are known to kidnap children from their homes, and force them into a life of

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¹ *South Africa Police Investigate 'Baby Begging Scam'*, BBC NEWS (Aug. 17, 2010, 9:47 ET), <http://www.bbc.co.uk/news/world-africa-10999224>.

² *Crèche Definition*, THEFREEDICTIONARY.COM, www.thefreedictionary.com/creche (last visited Nov. 30, 2011).

³ *Rent-A-Baby (Part 1)*, M-NET (May 23, 2010, 7:00), <http://beta.mnet.co.za/carte blanche/Article.aspx?id=3964>.

⁴ *Id.*

panhandling. These children are starved and beaten for several days, and are then maimed or blinded to garner more sympathy.⁵

In Senegal, parents send their young boys to daraas, Quranic schools run by religious leaders to educate the boys in religion and academics.⁶ However, these boys receive a rude awakening when they arrive. Instead of being taught and nurtured, they are forced onto the streets for long hours to beg for money.⁷ These schools collect up to \$60,000 per year from the children. One would question why parents would be willing to send their children off to these schools if tragic results are inevitable, but in Muslim societies, such as Senegal, sending your children away to daraas is not out of the ordinary.

Knowing these facts puts the compassionate tourist in a tough position. He is left to decide whether or not he should give money to these poor, begging children. There is always the chance that the child's plight may be legitimate, and not forced on him by a con artist. As difficult as it may be, the answer is no.⁸ To give to these children perpetuates the problem. The "bleeding" must be stopped at its source. If tourists continue to "feed" the child trafficking industry by donating to child beggars, kidnapers, scammers and con artists will continue to funnel these poor children into that life.

⁵ *Gangs Profit from Maimed Child Beggars*, THE CNN FREEDOM PROJECT: ENDING MODERN DAY SLAVERY BLOGSPOT (May 4, 2011, 12:07 AM), <http://thecnnfreedomproject.blogs.cnn.com/2011/05/04/gang-profits-from-maimed-child-beggars/>.

⁶ *Senegal: Boys in Many Quranic Schools Suffer Severe Abuse*, HUMAN RIGHTS WATCH (Apr. 15, 2010), <http://www.hrw.org/news/2010/04/15/senegal-boys-many-quranic-schools-suffer-severe-abuse>.

⁷ *Id.*

⁸ *See Begging Tools*, IOL NEWS (May 8, 2008, 12:43 PM), <http://www.iol.co.za/news/south-africa/begging-tools-1.399443>; *What Happens When You Give-A Case Study*, ONSPLEK PROJECTS, <http://www.onsplek.org.za/index.php?id=88> (lasted visited Nov. 30, 2011).